IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.3368 of 2006
UMASHANKAR KUMAR
Versus
STATE OF BIHAR & ANR

For the petitioner : Mr. Ashutosh Kumar, Advocate
For the State : Mr. Jharkhandi Upadhaya, A.P.P.
For Opp.Party No. 2 : Mr. Subodh Prasad, Advocate

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O R D E R

The sole accused of Hajipur Town (Industrial Area) P.S. Case No.196 of 2002 registered under Sections 420 and 406 I.P.C has prayed for the quashing of the entire criminal case including the order dated 12.12.2005 passed therein by Sri Mrityunjay Singh, Judicial Magistrate, Ist Class, Vaishali at Hajipur, whereby he has rejected the petitioner's petition under Section 239 Cr.P.C. for his discharge.

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One Chhathu Lal Chodhary impleaded herein as Opp.Party no.2, filed Complaint Petition No.747 of 2002 alleging inter alia that as the petitioner fell in need of money he became desirous of selling his share in the lands and as the complainant expressed his willingness to purchase the same, discussions were held at the house of one Hira Lal Chaurasiya on 2.3.2000 where it was finalized that the lands would be transferred by registered sale deed for consideration of Rs.1.25 lacs. It was also decided that since the accused was in immediate need of money, a sum of Rs.1 lac was to be paid by the end of the month and the balance amount would be paid by 1.7.2000 when the registration would be completed. It was also decided that at the

time of the payment of Rs.1 lac , the accused would execute a ***Mahadnama .*** It is alleged that on 15.3.2000 a Cheque for Rs. 27,500/- was handed over to the petitioner in the presence of the witnesses and time was sought for payment of the balance amount. Thereafter by Cheque dated 31.3.2000, on a request being made by the complainant, Hira Lal Chaurasiya paid a sum of Rs.72,500/- and a ***Mahadnama*** was executed on stamp paper on that very date in respect of 7 ½ dhurs of land appertaining to ***Khata*** no.231, ***Khesra*** no.2374. It has been stated that later on the complainant requested the petitioner to execute the sale deed and was ready and willing to pay the balance amount of Rs.25, 000/-but the petitioner allegedly kept on deferring the matter. Three successive legal noices were sent by the complainant to the petitioner which evinced no response. Eventually, on 16.4.2002 when again a request was made to the petitioner to execute the sale deed, the petitioner categorically refused to do so. This created suspicion and presumption in the mind of the complainant that the petitioner had cheated him of his money.

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The said complaint was sent to the concerned Police Station under Section 156 (3) Cr.P.C. , on the basis whereof the aforesaid Hajipur Town Police Station Case was recorded and after due investigation a chargesheet under Sections 420 and 406 I.P.C. was submitted against the petitioner.

It has been submitted on behalf of the petitioner that he has been falsely implicated in this case as no money , in fact, was paid to him and he had never expressed any intention and willingness to sell his land. It was further submitted that the complainant/informant had already preferred a title suit, being T.S.No.164 of 2003, for specific performance of contract, in which he had raised similar allegations. The learned counsel sought to draw my attention to the fact that in the plaint of title suit a reference had been made regarding the criminal case having been lodged against the petitioner. The learned counsel contended that even if the allegations at their face value is accepted as true , yet then it would at the best amount to a civil cause of action giving rise to civil liability , for which no criminal prosecution could be launched.

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The learned counsel for the petitioner also sought to draw my attention to the surreptitious conduct of Opp.Party no.2. He pointed out that in the title suit, defective notices were sent to the petitioner which he never received and the matter was decided ***ex parte*** vide Judgment dated 9.7.2004 by Subordinate Judge-I, Vaishali at Hajipur and when he came to know about the said ***ex parte*** order, he preferred Misc.Case No.13 of 2004 under Order IX, Rule 13 C.P.C. for rescission of the said Judgment but Opp.Party no.2 had not appeared therein till 15.10.2004. On this ground, the petitioner sought to submit that two parallel proceedings at the same time against the

same person in respect of the same cause of action cannot be initiated, and as such, the subsequent criminal proceeding was an abuse of the process of the court.

It is true that the case as propounded in the F.I.R. does have the trappings of a civil nature but simply because there is a remedy provided by way of civil action in the form of a suit for specific performance of contract that by itself does not clothe the court to infer that civil remedy is the sole course. Both civil and criminal remedies can be pursued in diverse situation since they are not mutually exclusive but clearly co-extensive and essentially differ in their content and consequence. Merely because, an act as a civil profile it is not sufficient to denude it of its criminal outfit. As held in the case of M/S Medchi Chemicals –Vrs. M/S Biological E. Ltd., reported in 2000 (3) PLJR 56 (SC) , it is an anathema to suppose that if a civil remedy is available, a criminal prosecution is completely barred. What is essential is to see whether a particular act makes out or creates a criminal liability and if a criminal liability is made out then the court is at liberty to take action by way of a criminal proceeding.

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As held in Indian Oil Corporation –Vrs. NEPC India Ltd. reported in (2006) 6 SCC 736, a given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence ; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature

and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available, or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

In the instant case a prima face case is made out to the effect that the petitioner having received the entire consideration money for the transfer of his land to the complainant had not done so notwithstanding several reminders and legal notices having been sent. Apparently, there was an element and motive in the mind of the petitioner to a criminal breach of trust as also cheating which had compelled the petitioner not to execute the sale deed as per agreement even though receiving the consideration amount .

Due regard being had to the facts and circumstances of the case, I find no merit in this application which is dismissed.

(Abhijit Sinha, J)

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Patna High Court, Patna
Dated : the 20th August,2008
Nawal Kishore Singh/A.F.R.